

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

La'MON AKEMON,

Petitioner

v.

C-1-06-166

TIMOTHY BRUNSMAN,

Respondent

ORDER

The matter is before the Court upon the Report and Recommendation of the Magistrate Judge (doc. no. 27) recommending that Petitioner's Motion for Relief from Judgment (doc. no. 20) be denied and that further proceedings upon the Motion are not warranted under the circumstances of this case.

The Court finds that the Magistrate Judge has accurately set forth the applicable law and has properly applied it to the particular facts of this case. Accordingly, in the absence of any objection by petitioner, this Court accepts the Report as uncontroverted.

The Court accepts the factual findings and legal reasoning of the Magistrate Judge and hereby **ADOPTS AND INCORPORATES BY REFERENCE** into this Order his Report and Recommendation dated March 1, 2008 (doc. No. 27).

Petitioner's Motion under Fed. R. Civ. P. 60(b)(6) for relief from judgment (doc. no. 20) is **DENIED** and this matter is **TERMINATED** on the docket of this Court.

A certificate of appealability shall not issue with respect to the denial of petitioner's Motion for Relief from Judgment because petitioner has failed to make a substantial showing of the denial of a constitutional right remediable in this federal habeas corpus proceeding. *See* 28 U.S.C. § 2253; Fed. R. App. P. 22(b). Petitioner has not shown that reasonable jurists could debate whether this claim should have been resolved in a different manner or that the issues presented were "adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 323–324 (2003) (quoting *Slack v. McDaniel*, 529 U.S. 473, 483–84 (2000)) (in turn quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983)).

With respect to any application by petitioner to proceed on appeal *in forma pauperis*, the Court **CERTIFIES** pursuant to 28 U.S.C. § 1915(a) that an appeal of any Order adopting this Report and Recommendation would not be taken in "good faith," and, therefore, **DENIES** petitioner leave to proceed on appeal *in forma pauperis* upon a showing of financial necessity. *See* Fed. R. App. P. 24(a); *Kincade v. Sparkman*, 117 F.3d 949, 952 (6th Cir. 1997).

IT IS SO ORDERED.

s/Herman J. Weber
Herman J. Weber, Senior Judge
United States District Court